IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13/08/2004

CORAM:

THE HONOURABLE MR. JUSTICE A.K. RAJAN

W.P.No. 1663 of 2002

R. Boopathy .. Petitioner

-Vs-

1. The Director
Motor Vehicle and Maintenance Department
Government of Tamil Nadu
Ashok Nagar
Chennai 83.

2. The Government of Tamil Nadu
rep by its Secretary
Labour & Employment Department
Fort St. George
Chennai 9. .. Respondents

!For Petitioner .. Ms. Anna Mathew

^For Respondents .. Mr. Suresh Viswaath, G.A.

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus as stated therein.

:ORDER
The prayer in the writ petition is to issue a writ of Certiorarified Mandamus to quash the order in Proceeding No.A1/7517/2001, dated 26 .11.2001 issued by the first respondent, after calling for the records concerned and consequently direct the first respondent to grant continuity of service from 1967 for the purpose of pension and other terminal benefits as per the Award dated 5.1.1991 passed by II Additional Labour Court, Madras and pay the petitioner his entire back wages of Rs.2,37,026/- from 1.7.1985 to 6.3.1996 with exemplary interest and award costs.

2. The petitioner was appointed as Pump Operator in the year 1967. On 30.1.1974, while he was in service, he was found in possession of one litre of petrol drawn unauthorisedly from the petrol Bunk. Hence, he was

suspended, pending disciplinary proceedings. On the completion of the departmental enquiry, the petitioner was found guilty of the charges levelled against him and an order of dismissal was passed in the year 1982 since he was convicted by the Court. Against the said findings, he filed a criminal appeal. The said appeal was disposed of on 28.6.1985 imposing a sentence of imprisonment till the rising of the court. But, with respect to other aspects, the appeal was dismissed. Against the dismissal of the petitioner, he raised an industrial dispute before the Labour Court, and the Labour Court passed an award on 5.1.1991 holding that the dismissal of the petitioner from service was not legally sustainable. The Labour Court, exercising power under Section 11-A of the Industrial Disputes Act, found the punishment was disproportionate to the offence committed and it held that the loss sustained by the petitioner from 2.3.1974 to 28.6.1982 was sufficient punishment and therefore passed an award to the effect that the petitioner shall be

reinstated in service and backwages shall be paid from 1.7.1985 on the basis of the last drawn pay. It also held that the petitioner shall be given continuous service (kPz;Lk; bjhlh;r;rpahd gzp mspf;fntz;Lk;).

3. Against the said award, both - the petitioner as well as the respondent - filed writ petitions and both the writ petitions were dismissed and against the dismissal of the writ petition, the petitioner filed a writ appeal. The writ appeal filed by the petitioner was also dismissed. The respondent did not file any writ appeal and accepted the order passed in the writ petitions. During the pendency of the writ petitions, an interim order was passed directing the respondent to reinstate the petitioner from 1.3.1996. But, the petitioner was reinstated on 6.3.1996. Though he was reinstated, the back wages were not paid to him. In the meanwhile, the petitioner retired from service on 31.12.2001. Further, in the impugned order, passed by the first respondent, it was stated that the period between 1.2.1974 and 5.3.1996 has to be considered as 'break-in-service' and he will not be eligible for 'continuity of service'.

4. Inasmuch as the Labour Court has passed an award that the petitioner shall be paid backwages from 1.7.1985, the backwages shall be paid by the respondents. When the backwages are paid, the petitioner cannot be considered as a person not in service, that is, he deemed to be in service from 1.7.1985. Therefore, the conclusion in the impugned order that the period between 1.2.1974 and 5.3.1996 has to be considered as break-in-service, cannot be sustained, and the same has to be set aside as not legal.

5. In so far as 'continuity of service' is concerned, the Labour Court has used the words 'bjhlh;r;rpahd gzp'. It is possible to interpret the same as 'continuous service'. But what the Labour Court meant is 'continuity of service' and not 'continuous service'. This can be understood from the conclusion in para-11 of the award of the Labour Court, wherein it came to the conclusion that the termination of service of the petitioner was illegal. When the words 'continuous service' read along with the illegal termination would show that the intention of the Labour Court was to grant 'continuity of service'. For the 'continuity of service', the words

'gzp bjhlh;r;rp' should have been used. Merely because of the use of a wrong phraseology, the intention of the Labour Court cannot be neglected. The intention of the Labour Court was to grant 'continuity of service' with back wages from 1.7.1985. Therefore, the respondents are bound to pay the backwages from 1.7.1985 till 6.3.1996 and the service of the petitioner should be treated as 'continuous service' right from 1967, accordingly his pension has to be calculated. Considering the inordinate delay in payment of backwages, the respondents are directed to pay arrears of the backwages within two weeks from today.

6. With the above observation, the writ petition is allowed.
No costs. Consequently, WMP No.2316 of 2002 is closed.

Index : Yes
Internet: Yes
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To
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A.K. RAJAN, J.

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